

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate )  
increase for Orange-Osceola )  
Utilities, Inc. in Osceola County, )  
and in Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Highlands, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Putnam, Seminole, St. Johns, )  
St. Lucie, Volusia, and Washington )  
Counties by Southern States )  
Utilities, Inc. )  
\_\_\_\_\_ )

Docket No. 950495-WS

Filed: November 27, 1995

CITIZENS' RESPONSE AND OPPOSITION TO SSU'S MOTION TO STRIKE

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this opposition to the motion to strike filed by SSU on November 22, 1995.

1. After producing a document for inspection at the offices of its auditors Price Waterhouse, SSU refused to provide a copy of the document based on a verbal claim that the document was privileged.

2. SSU should have asked the Commission for a protective order to protect it from producing the document, but instead SSU required the Citizens to first file a motion to compel.

3. Other than a verbal claim that the document was privileged and that SSU would not provide a copy of the document it

had already produced for inspection, the Citizens had no way of knowing what arguments SSU might make in support of its position until SSU filed its response to the Citizens' tenth motion to compel. Citizens' reply is therefore equivalent to an initial response to what should have been SSU's motion for a protective order in the first place.

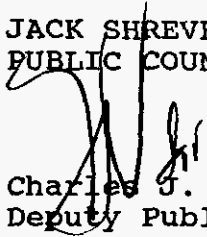
4. In order to reach the issue of whether inadvertent disclosure of an otherwise privileged document waives the privilege, SSU must first establish that the document is privileged. SSU has still not met its burden of establishing the privilege. Southern Bell Telephone & Telegraph Company v. Deason, 632 So.2d 1377 (Fla. 1994).

5. With respect to the issue of whether inadvertent disclosure of a privileged document waives the privilege, the author of a recent article appearing in the Florida Bar Journal argues that inadvertent disclosure no longer waives the privilege. The author specifically notes, however, that the issue is far from settled in Florida, just as stated in the Citizens' reply. Beane and Nailos, Inadvertent Disclosure of Attorney-Client Privileged Material: Putting the Horse Back in the Barn, The Florida Bar Journal, October, 1995, page 68, middle column, first sentence of first full paragraph.

6. Nothing in the Commission's rules prohibit the filing of a reply.

Respectfully submitted,

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Attorneys for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 950495-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery\* to the following parties on this 27th day of November, 1995.

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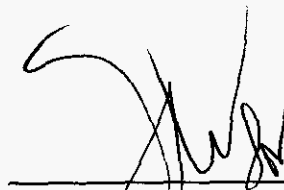
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